**THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY**

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**AND**

**THE HON'BLE MR JUSTICE C.V. RAMULU**

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**WRIT PETITION No.1035 of 2005**

**DATE:05-08-2005**

Between:

M/s. Anand Nilayam Hotels Pvt. Ltd.,

Rep. by its Managing Director Kola Ramu

S/o. Venkata Ramaiah, aged about 54 years,

Opp. APSRTC Central Bus Station,

Tirupathi

**..... PETITIONER**

**AND**

The Government of Andhra Pradesh

Rep. by its Secretary

Department of Tourism, Secretariat Building,

Saifabad, Hyderabad & two others.

**.....RESPONDENTS**

**THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY**

**AND**

**THE HON'BLE SRI JUSTICE C.V. RAMULU**

**W.P. No.1035 OF 2005**

**ORDER**: (Per Hon'ble Sri Justice B. Sudershan Reddy)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a Writ of *Mandamus* declaring the inaction on the part of the 1st respondent - Government of Andhra Pradesh and the 2nd respondent - Director of Tourism, Department of Tourism, in issuing eligibility certificate in favour of the petitioner quantifying the amount of tax incentives *viz*., sales tax and luxury tax for a period of 5 years from the date of commencement of commercial production as illegal and arbitrary.

In the affidavit filed in support of the writ petition,
petitioner asserts that it commenced commercial production from 03-03-2002 and thereafter an application seeking permanent eligibility certificate is said to have been filed on 27-06-2002 within a period of 180 days as is required under Clause 2 of the Tourism Policy 1998, which *inter alia* reads as under:

> *"The units eligible for incentives under the scheme and which have been accorded temporary registration by the Director of Tourism shall apply to District Collector in case of tiny/small tourism units and to the Director of Tourism in case of large/prestigious tourism units within 180 days of the*

*commencement of commercial operation. The competent authority/ sanctioning authority on receiving the application will scrutinize the application and will issue an 'eligibility certificate' to enable the unit to obtain the benefits."*

Clause 1(f) of the Policy says that *"the eligible unit will be registered permanently only after the commencement of commercial operations and completion of the project."*

Clause 1(a) of the Policy says, *"Director of Tourism shall give provisional registration in the first instance up to 2 years to the eligible unit after scrutinizing the application received by him under the scheme."*

That a cumulative reading of the clauses referred to hereinabove does not suggest that the Director of Tourism himself can grant the benefits or incentives and even as per the letter, dated 05-02-2003, upon which heavy reliance is placed by the learned counsel for the petitioner, does not support or advance their contention. In the said letter, it is merely stated that the petitioner-M/s. Anand Nilayam Hotels Private Limited is registered as a Tourism Unit under the New Tourism Policy, 1998 subject to the condition that it would be entitled to incentives spelt out in the New Tourism Policy, 1998 excepting investment subsidy and the power tariff concessions. The New Tourism Policy 1998 is required to be read in to the proceedings of the Department of Tourism, dated 05-02-2003.

In the counter affidavit filed by the Department of Tourism, it is admitted that the petitioner unit has been registered under the Tourism Policy 1998 through the Director of Tourism proceedings, dated 05-02-2003, referred to hereinabove. It is also admitted that it would be entitled to the incentives spelt out in new Tourism Policy 1998 excepting the investment subsidy and the power tariff concessions in terms of G.O. Ms. No.233, Youth Advancement Tourism & Cultur (T) Department, dated 18-12-2002. At the same, it is pointed out that in terms of the new Tourism Policy 1998, under Item – 2 of Annexure –

V, petitioner has to apply after registering the unit permanently for extending the said incentives to the 2nd respondent within the time bound limit of 180 days from the actual date of commencement of the commercial operations of the unit. It is asserted that the petitioner has not applied to do so, hence not eligible to claim the said incentives.

The crucial question that falls for consideration is as to the exact date of commencement of commercial operation by the petitioner unit. There is a serious dispute raised in the counter affidavit filed by the respondents as to the date on which the petitioner commenced its actual commercial operations. This Court in summary proceedings under
Article 226 of the Constitution of India would not undertake to adjudicate such serious disputed questions of fact.
The fact remains that the application submitted by the petitioner on 27-06-2002 was received by the Director of Tourism on 28-06-2002, a copy of which is made available for perusal of the Court. The question, whether the petitioner's application, in fact has been filed on 28-06-2002 and whether the same is within 180 days from the date of commencement of its actual commercial operation is required to be gone into by the competent authority for the purpose of deciding as to whether the petitioner is entitled for grant of permanent eligibility certificate. The question of availing the benefit of incentives would depend upon grant of final eligibility certificate.

In the circumstances, the Writ Petition is disposed of directing the authorities concerned to scrutinize as to whether the application, dated 27-06-2002, in fact has been received by the Department of Tourism in terms of their policy and whether the same is within the prescribed period of 180 days from the date of commencement of actual commercial operations by the petitioner. That an appropriate decision shall be taken and a reasoned order shall be passed and communicated to the petitioner and, in case, any further facts are required to be verified as to when the petitioner commenced its commercial operations, necessary notices shall be issued to the petitioner so as to enable it to produce such material as it may wish to do so in support of its contention of date of commencement of commercial operations and an appropriate

decision shall be taken in this regard within a period of three months from the date of receipt of the copy of this order.

Sofar as the question of postponement of realization of commercial taxes are concerned, no such relief could be granted in this writ petition as any such grant would be premature and would amount to conferring the benefit upon the petitioner even before the decision is taken by the competent authority as to whether the petitioner, in law, is entitled to grant of final eligibility certificate. That portion of the prayer is rejected.

The Writ Petition is accordingly disposed of with the directions as above. There shall be no order as to costs.

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B. SUDERSHAN REDDY, J

Date:05-08-2005.

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C.V. RAMULU, J

**NOTE:**

Furnish C.C. of the order by 12-08-2005.

**(B/O)**

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